

CHAPTER 16. REINSURANCE INTERMEDIARY ACT

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§ 1601. Short title

This Act may be cited as the Reinsurance Intermediary Act. 68 Del. Laws, c. 69, § 1, approved June 28, 1991.

§ 1602. Definitions

- (a) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.
- (b) "Controlling person" means any person, firm, association or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control or activities of the reinsurance intermediary.
- (c) "Insurer" means any person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer.
- (d) "Licensed producer" means an agent, broker or reinsurance intermediary licensed pursuant to the applicable provision of the insurance law.
- (e) "Reinsurance intermediary" means a reinsurance intermediary — broker or a reinsurance intermediary — manager as these terms are defined in subsections (f) and (g) of this section.
- (f) "Reinsurance intermediary — broker" ("RB") means any person, other than an officer or employee of the ceding insurer, "firm", association or corporation who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of each insurer.
- (g) "Reinsurance intermediary — manager" (RRM) means any person, firm, association or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer (including the manager of a separate division, department or underwriting office) and acts as an agent for such reinsurer whether known as a RM, a manager or other similar term. Notwithstanding the above, the following persons shall not be considered a RM, with respect to such reinsurer, for the purposes of this Act:
 - (1) An employee of the reinsurer;
 - (2) A U. S. Manager of the United States branch of an alien reinsurer;
 - (3) An underwriting manager which, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the Holding Company Act, and whose compensation is not based on the volume of premiums written;

(4) The manager of a group, association, pool or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the Insurance Commissioner of the state in which the manager's principal business office is located.

(h) "Reinsurer" means any person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer which assumes reinsurance.

(i) "To be in violation" means the reinsurance intermediary, insurer or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this Act.

(j) Qualified U. S. Financial Institutions.

For purposes of this Act, a "qualified United States financial institution" means an institution that:

(1) Is organized or (in the case of a U. S. office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;

(2) Is regulated, supervised and examined by U. S. federal or state authorities having regulatory authority over banks and trust companies; and

(3) Has been determined by either the Commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner. 68 Del. Laws, c. 69, § 1, approved June 28, 1991.

§ 1603. Licensure

(a) No person, firm, association or corporation shall act as an RB in this state if the RB maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation:

(1) In this state, unless such RB is a licensed producer in this state; or

(2) In another state, unless such RB is a licensed producer in this state or another state having a law substantially similar to this law or such RB is licensed in this state as a nonresident reinsurance intermediary.

(b) No person, firm, association or corporation shall act as an RM:

(1) For a reinsurer domiciled in this state, unless such RM is a licensed producer in this state;

(2) In this state, if the RM maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation in this state, unless such RM is a licensed producer in this state;

In another state for a nondomestic insurer, unless such RM is a licensed producer in this state or another state having a law substantially similar to this law or such person is licensed in this state as a nonresident reinsurance intermediary.

(c) The Commissioner may require an RM subject to subsection (b) of this section to:

(1) File a bond in an amount from an insurer acceptable to the Commissioner for the protection of the reinsurer; and

(2) Maintain an errors and omissions policy in an amount acceptable to the Commissioner.

(d) (1) The Commissioner may issue a reinsurance intermediary license to any person, firm, association or corporation who has complied with the requirements of this Act. Any such license issued to a firm or association

will authorize all the members of such firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application any supplements thereto. Any such license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of such corporation, and all such persons shall be named in the application and any supplements thereto.

(2) If the applicant for a reinsurance intermediary license is a nonresident, such applicant, as a condition precedent to receiving or holding a license, shall designate the Commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this Act, for designation of service of process upon unauthorized insurers; and also shall furnish the Commissioner with the name and address of a resident of this state upon whom notices or orders of the Commissioner or process affecting such nonresident reinsurance intermediary may be served. Such licensee shall promptly notify the Commissioner in writing of every change in its designated agent for service of process, and such change shall not become effective until acknowledged by the Commissioner.

(e) The Commissioner may refuse to issue a reinsurance intermediary license if, in his judgment, the applicant, any one named on the application, or any member, principal, officer or director of the applicant, is not trustworthy, or that any controlling person of such applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for or suspension of such license, or has failed to comply with any prerequisite for the issuance of such license. Upon written request therefor, the Commissioner will furnish a summary of the basis for refusal to issue a license, which document shall be privileged and not subject to disclosure under the Freedom of Information Act.

(f) Licensed attorneys-at-law of this state when acting in their professional capacity as such shall be exempt from this section. 68 Del. Laws, c. 69, § 1, approved June 28, 1991.

§ 1604. Required contract provisions — reinsurance intermediary brokers

Transactions between an RB and the insurer it represents in such capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, contain provisions that:

- (1) The insurer may terminate the RB's authority at any time.
- (2) The RB will render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing, to the RB, and remit all funds due to the insurer within thirty (30) days of receipt.
- (3) All funds collected for the insurer's account will be held by the RB in a fiduciary capacity in a bank which is a qualified U. S. financial institution as defined herein.
- (4) The RB will comply with Section 1605 of this Act.
- (5) The RB will comply with the written standards established by the insurer for the cession or retrocession of all risks.
- (6) The RB will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded. 68 Del. Laws, c. 69, § 1, approved June 28, 1991.

§ 1605. Books and records — reinsurance intermediary brokers

(a) For at least ten (10) years after expiration of each contract of reinsurance transacted by the RB, the RB will keep a complete record for each transaction showing:

- (1) The type of contract, limits, underwriting restrictions, classes or risks and territory;
- (2) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation;

- (3) Reporting and settlement requirements of balances;
- (4) Rate used to compute the reinsurance premium.
- (5) Names and addresses of assuming reinsurers;
- (6) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RB;
- (7) Related correspondence and memoranda;
- (8) Proof of placement;
- (9) Details regarding retrocessions handled by the RB including the identity of retrocessionaires and percentage of each contract assumed or ceded;
- (10) Financial records, including but not limited to, premium and loss accounts; and
- (11) When the RB procures a reinsurance contract on behalf of a licensed ceding insurer:
 - (a) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
 - (b) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

(b) The insurer will have access and the right to copy and audit all accounts and records maintained by the RB related to its business in a form usable by the insurer. 68 Del. Laws, c. 69, § 1, approved June 28, 1991.

§ 1606. Duties of insurers utilizing the services of a reinsurance intermediary — broker

- (a) An insurer shall not engage the services of any person, firm, association or corporation to act as an RB on its behalf unless such person is licensed as required by Section 1603(a) of this Act.
- (b) An insurer may not employ an individual who is employed by an RB with which it transacts business, unless such RB is under common control with the insurer and subject to the Holding Company Act.
- (c) The insurer shall annually obtain a copy of statements of the financial condition of each RB with which it transacts business. 68 Del. Laws, c. 69, § 1, approved June 28, 1991.

§ 1607. Required contract provisions — reinsurance intermediary managers

Transactions between an RM and the reinsurer it represents in such capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's Board of Directors. At least thirty (30) days before such reinsurer assumes or cedes business through such producer, a true copy of the approved contract shall be filed with the Commissioner for approval. The contract shall, at a minimum, contain provisions that:

- (1) The reinsurer may terminate the contract for cause upon written notice to the RM. The reinsurer may suspend the authority of the RM to assume or cede business during the pendency of any dispute regarding the cause for termination.
- (2) The RM will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to the RM, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

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(3) All funds collected for the reinsurer's account will be held by the RM in a fiduciary capacity in a bank which is a qualified U. S. financial institution as defined herein. The RM may retain no more than three (3) months estimated claims payments and allocated loss adjustment expenses. The RM shall maintain a separate bank account for each reinsurer that it represents.

(4) For at least ten (10) years after expiration of each contract of reinsurance transacted by the RM, the RM will keep a complete record for each transaction showing:

- (1) The type of contract, limits, underwriting restrictions, classes or risks and territory;
- (2) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;
- (3) Reporting and settlement requirements of balances;
- (4) Rate used to compute the reinsurance premium;
- (5) Names and addresses of reinsurers;
- (6) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RM;
- (7) Related correspondence and memoranda;
- (8) Proof of placement;
- (9) Details regarding retrocessions handled by the RM, as permitted by Section 1609(d) of this Act, including the identity of retrocessionaires and percentage of each contract assumed or ceded.
- (10) Financial records, including but not limited to, premium and loss accounts; and
- (11) When the RM places a reinsurance contract on behalf of a ceding insurer:
 - a. Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
 - b. If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.
- (5) The reinsurer will have access and the right to copy all accounts and records maintained by the RM related to its business in a form usable by the reinsurer.
- (6) The contract cannot be assigned in whole or in part by the RM.
- (7) The RM will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection or cession of all risks.
- (8) Sets forth the rates, terms and purposes of commissions, charges and other fees which the RM may levy against the reinsurer.
- (9) If the contract permits the RM to settle claims on behalf of the reinsurer:
 - a. All claims will be reported to the reinsurer in a timely manner.
 - b. A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:

- (1) Has the potential to exceed the lesser of an amount determined by the Commissioner or the limit set by the reinsurer;
- (2) Involves a coverage dispute;
- (3) May exceed the RM's claims settlement authority;
- (4) Is open for more than six (6) months; or
- (5) Is closed by payment of the lesser of an amount set by the Commissioner or any amount set by the reinsurer.

c. All claim files will be the joint property of the reinsurer and RM. However, upon an order of liquidation of the reinsurer such files shall become the sole property of the reinsurer or its estate; the RM shall have reasonable access to and the right to copy the files on a timely basis;

d. Any settlement authority granted to the RM may be terminated for cause upon the reinsurer's written notice to the RM or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the RM, that such interim profits will not be paid until one year after the end of each underwriting period for property business and five (5) years after the end of each underwriting period for casualty business (or a later period set by the Commissioner for specified lines of insurance) and not until the adequacy of reserves on remaining claims has been verified pursuant to Section 1609(c) of this chapter.

(11) The RM will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

(12) The reinsurer shall periodically (at least semi-annually) conduct an on-site review of the underwriting and claims processing operations of the RM.

(13) The RM will disclose to the insurer any relationship it has with any insurer prior to ceding or assuming any business with such insurer pursuant to this contract.

(14) The acts of the RM shall be deemed to be the acts of the reinsurer on whose behalf it is acting. 68 Del. Laws, c. 69, § 1, approved June 28, 1991.

§ 1608. Prohibited acts

The RM shall not:

(1) Bind retrocessions on behalf of the insurer, except that the RM may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. Such guidelines shall include a list of reinsurers with which such automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(2) Commit the reinsurer to participate in reinsurance syndicates.

(3) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which he is appointed.

(4) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year.

(5) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

(6) Jointly employ an individual who is employed by the reinsurer.

(7) Appoint a sub-RM. 68 Del. Laws, c. 69, § 1, approved June 28, 1991.

§ 1609. Duties of reinsurers utilizing the services of a reinsurance intermediary — manager

(a) A reinsurer shall not engage the services of any person, firm, association or corporation to act as an RM on its behalf unless such person is licensed as required by Section 1603(b) of this chapter.

(b) The reinsurer shall annually obtain a copy of statements of the financial condition of each RM which such reinsurer has engaged prepared by an independent certified accountant in a form acceptable to the Commissioner.

(c) If an RM establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the RM. This opinion shall be in addition to any other required loss reserve certification.

(d) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the RM.

(e) Within thirty (30) days of termination of a contract with an RM, the reinsurer shall provide written notification of such termination to the Commissioner.

(f) A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder or subproducer of its RM. This subsection shall not apply to relationships governed by the Holding Company Act or, if applicable, the Broker Controlled Insurer Act. 68 Del. Laws, c. 69, § 1, approved June 28, 1991.

§ 1610. Examination authority

(a) A reinsurance intermediary shall be subject to examination by the Commissioner. The Commissioner shall have access to all books, bank accounts and records of the reinsurance intermediary in a form usable to the Commissioner.

(b) An RM may be examined as if it were the reinsurer. 68 Del. Laws, c. 69, § 1, approved June 28, 1991.

§ 1611. Penalties and liabilities

(a) A reinsurance intermediary, insurer or reinsurer found by the Commissioner after a hearing conducted in accordance with the Administrative Procedures Act, to be in violation of any provision(s) of this Act, shall:

(1) For each separate violation, pay a penalty in an amount not exceeding fifteen thousand dollars (\$15,000);

(2) Be subject to revocation or suspension of its license; and

(3) If a violation was committed by the reinsurance intermediary, such reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation.

(b) The decision, determination or order of the Commissioner pursuant to subsection (a) of this section shall be subject to judicial review pursuant to the Administrative Procedures Act.

(c) Nothing contained in this section shall affect the right of the Commissioner to impose any other penalties provided in the insurance law.

(d) Nothing contained in this Act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors or other third parties or confer any right to such persons. 68 Del. Laws, c. 69, § 1, approved June 28, 1991.

§ 1612. Rules and regulations

The Commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this Act. 68 Del. Laws, c. 69, § 1, approved June 28, 1991.

§ 1613. Effective date

This Act shall take effect on January 1, 1992. No insurer or reinsurer may continue to utilize the services of a reinsurance intermediary on and after January 1, 1992, unless utilization is in compliance with this Act. 68 Del. Laws, c. 69, § 1, approved June 28, 1991.

Effective date. Section 2. This Act shall become effective thirty (30) days after adoption.